

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

412 19th STREET, N.E., L.L.C.
Respondent

Case No.: I-02-72200

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985, D.C. Official Code §§ 2-1801.01 - 1802.05, and Title 21 Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). On June 4, 2002, the Government served a Notice of Infraction (No. 72200) on Respondent 412 19th Street, N. E., L.L.C. alleging that it violated 21 DCMR 700.3, which requires solid wastes to be properly stored and containerized (the “Regulation”).¹ The Notice of Infraction alleged that the violation occurred on June 3, 2002, at 412 19th Street, N.E., (the “Property”), and sought a fine of \$1,000.

Mr. Leo H. Cummings, Jr. filed an answer of Deny on behalf of Respondent and requested a hearing. At the scheduled hearing on August 28, 2002, Mr. Donald Goodman, the Government inspector who issued the Notice of Infraction (the “Inspector”), appeared on behalf of the Government and Mr. Michael Minor appeared on behalf of Respondent. Mr. Minor stated that he was employed by Washington and Jackson Investors, which manages the Property for the

¹ 21 DCMR 700.3 provides:

All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.

owner, the Respondent, and that Mr. Cummings was a principal of Respondent who had transmitted the Notice of Infraction to him for handling. Mr. Minor then moved to amend the answer on behalf of Respondent to change it from Deny to Admit with Explanation, and he requested that I suspend or reduce the fine.

Under the particular circumstances of this case, including there being privity between Respondent, as owner, and Mr. Minor and his employer, as managers of the Property, and Mr. Minor having actual or apparent authority from the Respondent, I allowed Mr. Minor to act for Respondent in this matter. *See DOH v. Valira Limited Partnership*, OAH No. I-00-20388 at 2, n.1 (Final Order, June 6, 2002). Without objection from the Government, Respondent's answer was amended to Admit with Explanation.

Mr. Minor admitted that on the day in question there were uncovered trash receptacles on the Property that were overflowing with plastic bags filled with solid wastes and that plastic bags filled with solid wastes were also lying on the ground around the trash receptacles. There was also rat holes in the ground near the plastic bags. These conditions are shown in the photographs taken by the Inspector on day of the violation. Petitioner's Exhibits 100-102.

Mr. Minor accepted responsibility for the violation, but he contended that the violation occurred because neighbors had deposited a great number of the plastic bags in question in and around the trash receptacles. Mr. Minor stated that the violation was promptly remedied, since it occurred on the day of the regularly scheduled trash collection. He said that since the violation he has made changes and initiated new measures to prevent another violation, including engaging another company to collect the trash and provide a larger trash receptacle, relocating the receptacle to discourage neighbors and other unauthorized parties from depositing their trash

and having the Property treated by a professional extermination company. Mr. Minor also said that this was the first time a violation had occurred on the Property. The Government had no objection to a reduction of the authorized fine.

II. Findings of Fact

By its answer of Admit with Explanation, Respondent has admitted violating the Regulation on June 3, 2002, by failing to properly containerize solid wastes in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard on the Property, as alleged in the Notice of Infraction. The violation was promptly remedied, Respondent has accepted responsibility for its unlawful conduct, and it has taken steps to prevent another violation of the Regulation. Also, there is no evidence in the record of a history of noncompliance by Respondent.

III. Conclusions of Law

Respondent's plea of Admit with Explanation establishes that it violated the Regulation on June 3, 2002, as charged in the Notice of Infraction. A violation of the Regulation is classified as a Class 1 infraction, which is punishable by a fine of \$1,000 for a first offense. 16 DCMR §§ 3201.1(a)(1) and 3216(b).

Respondent's contention that the plastic bags filled with solid wastes were deposited on the Property by neighbors is unavailing. *Bruno v. District of Columbia Board of Appeals and Review*, 665 A.2d 202, 203 (D.C. 1995) (property owner is strictly liable for a violation of the Regulation); *DOH v. Kain*, OAH No. I-00-20378 at 2 (Final Order, June 6, 2002) (property owner liable, although trash was deposited by neighbors). However, Respondent has accepted

responsibility for its unlawful conduct, the violation was promptly corrected, and various preventative measures have been undertaken to prevent a reoccurrence of a violation. Also, there is no evidence in the record of a history of noncompliance with the Regulation by Respondent, and the Government does not object to a reduction of the fine. These factors make a substantial reduction of the authorized fine appropriate. Accordingly, I shall reduce the fine to \$350. D.C. Official Code §§ 2-1801.02(a)(2) and 2-1801.03(a)(6); U.S.S.G. 3E1.1; 18 U.S.C. § 3553.

IV. Order

Based on the above findings of fact and conclusions of law, it is this _____ day of _____ 2002:

ORDERED, that Respondent 412 19th Street, N.E., L.L.C. shall pay a fine in the total amount of **THREE HUNDRED FIFTY DOLLARS (\$350)** in accordance with the attached instructions within 20 calendar days of the date of mailing of this Order (15 calendar days plus 5 days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits, pursuant to D.C. Official Code § 2-

1802.03(f), the placement of a lien on real or personal property owned by Respondent, pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites, pursuant to D.C. Official Code § 2-1801.03(b)(7).

FILED **09/06/02**

Robert E. Sharkey
Administrative Judge